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March 9, 2001

Hand DeliveryHerbert Zeiler, Deputy Chief
Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-C343
Washington, DC 20554Re: High Speed Rail Safety Coalition
Petition for Rulemaking

Dear Mr. Zeiler:

This letter is written on behalf of the High Speed Rail Safety Coalition ("HSRSC") to update the status of its undertaking in relation to the petition for rulemaking ("Petition"), previously filed by the HSRSC, seeking the establishment of a new radio service and associated regulatory scheme to permit the operation of certain equipment known as the advanced civil speed enforcement system ("ACSES"). As is detailed in the Petition, the installation of ACSES by various railroads will facilitate the development and operation of high-speed rail service in the United States.

Installation of ACSES equipment has been ongoing in the Northeast Corridor ("NEC") (Washington, D.C.-to-Boston) over the past two years pursuant to a special authorization granted by the Office of Engineering and Technology.^{1/} During this process, members of the HSRSC (particularly, the National Railroad Passenger Corporation ("Amtrak")) have gained considerable experience regarding the installation and operation of this technology.

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^{1/} See Letter to Jeffrey H. Olson from Dale N. Hatfield, Chief of OET, dated March 18, 1999 ("Interim Authority Letter") (a copy is attached for your convenience).

By April 30, 2001, the HSRSC will confirm for the Commission whether, based on Amtrak's experience, the regulatory approach outlined in the Petition remains adequate, or whether a modified proposal would be more appropriate. The HSRSC appreciates the Commission's patience in this regard.

If you have any questions regarding this matter, please contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Olson", with a long horizontal flourish extending to the right.

Jeffrey H. Olson
Attorney for the
High-Speed Rail Safety Coalition

Enclosure

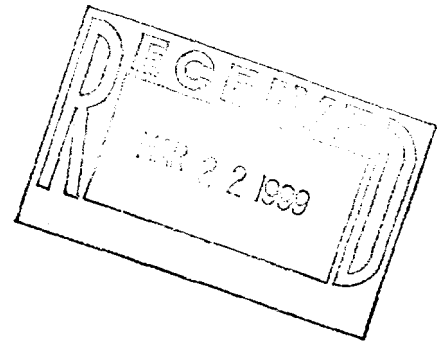
cc: Julius Knapp



Federal Communications Commission
Washington, D.C. 20554

March 18, 1999

Mr. Jeffrey H. Olson, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, N.W., Suite 1300
Washington, DC 20036



Dear Mr. Olson:

This is in reply to your submission of December 4, 1998, filed on behalf of National Railroad Passenger Corporation (Amtrak), New Jersey Transit Authority, Alstom Signaling, Inc., and Union Switch and Signal, Inc., known collectively as the high speed rail coalition ("HSRC"), requesting interim authority to permit the authorization of an advanced civil speed enforcement system ("ACSES") to allow for the initiation of high speed rail service and to provide enhanced safety for commuter rail services on the northeast corridor ("NEC").

You request interim authority to import, market, install and operate equipment necessary to satisfy the requirement from the Federal Railroad Administration ("FRA") that an ACSES system be installed in the NEC by October 1, 1999.¹ Specifically, you have requested a waiver of Parts 2, 87, and 95 of the Commission's rules. You state that the ACSES system, which has been used in European high speed rail systems in France and Sweden, operates with a transmitter/antenna unit attached to the train locomotive and a transponder located in the rail bed. The transponder is usually programmed with safety information, such as, braking distance, speed restrictions, etc. The ACSES transmitter on the locomotive operates on 27.125 MHz to deliver power to a transponder located in the track bed. The transponder then transmits the programmed information in the 4.5 MHz band to a receive antenna on the locomotive.

The FCC released a *Public Notice* on January 19, 1999 inviting comments on the request for interim authority.² Comments were received from the National Association of Broadcasters ("NAB"). Reply comments were received from the HSRC. In addition, we have coordinated HSRC's request with the Federal Government through the National Telecommunications and Information Administration, ("NTIA"). NTIA as spokesman for the Federal Government with regards to spectrum management issues has responded with a letter dated March 4, 1999 that it has no objection to HSRC's request.

NAB is concerned about the potential of the ACSES system to cause interference to reception

¹ See *Automatic Train Control and Advanced Civil Speed Enforcement System; Northeast Corridor Railroads*, 63 Fed.Reg. 39343 (July 22, 1998) ("FRA Order").

² See Public Notice, DA 99-175, *FCC Seeks Comment On Request For Interim Authority And Waiver Filed By Amtrak, New Jersey Transit Authority, Alstom Signaling, Inc., and Union Switch and Signal, Inc., For The Import, Marketing, Installation And Operation Of High Speed Rail Safety Equipment*.

of over-the-air television broadcasts. NAB requests that the Commission require the ACSES equipment to employ filtering circuitry that will suppress harmonic emissions to levels that comply with the general emission requirements contained in Part 15 of the Commission's rules. In the alternative, NAB requests that the ACSES equipment be modified so that the transmitting frequency will be one that will not cause interference to licensed communications. NAB asserts that trains equipped with the ACSES system when stopped could cause interference to over-the-air television reception within a 0.3 mile radius.

In response to NAB's objections HSRC submitted a technical analysis that shows the probability of interference to over-the-air television reception to be low. HSRC indicates that the worst case to cause potential interference to television reception occurs when the ACSES transmitter is directly over the transponder and that this duration is for a short period of time. Further, HSRC notes that the ACSES system does not generate RF energy when the train is moving at less than three miles per hour. HSRC further states that it will accept a condition on any interim authority granted by the Commission that would require HSRC to address cases of interference caused by the ACSES system to over-the-air television reception.

Our analysis reveals that the ACSES transmitter portion of this system operates on an Industrial, Scientific, Medical ("ISM") frequency allocated under Section 18.301 of the Commission's rules. In addition, the transponder portion of the ACSES system may be treated as an unintentional radiator under Part 15 of the Commission's rules. However, neither portion of the system fully complies with either Part 15 or Part 18. We have determined that Sections 18.305(b) and 15.209(a) would need to be waived to enable the operation of the ACSES system. The ACSES transmitter will need a waiver of Section 18.305(b) because it does not satisfy the out-of-band field strength limits on the 7th and 8th harmonics. In addition, we find that the ACSES transponder fundamental emission does not meet the general radiated emission limit for an intentional radiator operating at 4.5 MHz as listed in Section 15.209(a). We also note that the harmonic emissions of the ACSES transponder do not appear to exceed the general emission limits contained in Section 15.209(a). Thus, we are treating HSRC's request as a request for waiver of Parts 15 and 18 of the Commission's rules. We find such an approach would provide the most expedient method for resolution of this matter.

In addition, we will consider the HSRC's waiver request regarding Part 2 of the Commission's rules as a request to waive the equipment authorization requirements for the ACSES system. We note that the *FRA Order* requires that an ACSES system be installed on the NEC by October 1, 1999 and the equipment authorization process could delay the deployment of this equipment such that the deadline could not be met.

It is a well-established principle that the Commission will waive its rules only if it determines, after careful consideration of all pertinent factors, that such a grant would serve the public interest without undermining the policy which the rule in question is intended to serve. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). We find that the waivers would serve the public interest by allowing the HSRC to install an ACSES system that will provide enhanced safety for commuter rail services and permit the initiation of high speed rail service on the NEC as required by the *FRA Order*. Based on the information

submitted with the waiver request, comments, and reply comments we find that grant of this waiver will provide significant public benefits by permitting the ACSES system to be installed on the NEC, which will improve the safety of rail service. We further find that there is a low probability that harmful interference would be caused to over-the-air television reception by operation of the ACSES system and that any harmful interference would be intermittent and of very limited duration. Further, HSRC has agreed to remedy any instances of harmful interference that may occur as a result of the operation of the ACSES system. Preventing harmful interference to other radio services is the primary purpose of standards in the Commission's rules. Thus, it does not appear that the requested waivers would undermine the policy or intent of our rules.

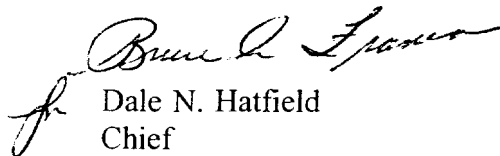
Accordingly, under the authority contained in Sections 0.31(i) and 0.241(a) of the Commission's regulations, 47 CFR §§ 0.31 (i) and 0.241 (a), the High Speed Rail Coalition is granted a waiver of Parts 2, 15 and 18 as described above to install and operate an advanced civil speed control system on the northeast corridor. This authority is subject to the following conditions:

- 1) The HSRC is required to resolve cases of harmful interference caused by the ACSES system, in particular to over-the-air television reception.
- 2) This waiver shall expire within two years from the date of this letter or upon the effective date of any rules the Commission may adopt for such systems, whichever is earlier. However, the cessation of U.S. manufacture, importation and marketing could be required at an earlier date should the Commission find that these ACSES systems are causing harmful interference to licensed services.

Please be aware that the ACSES system is not afforded any protection against interference under the Part 15 and Part 18 rules. See 47 CFR Sections 15.5 and 18.111. Any interference received by the ACSES system would be the responsibility of the HSRC to correct. We understand, however, that the ACSES system has been designed so that it can tolerate potential sources of interference. Grant of this waiver also does not infer that the Commission may allocate this spectrum for such equipment in the future.

If you have any further questions, please contact Rodney Conway at (202) 418-2904, via e-mail at rconway@fcc.gov, or at the address on the letterhead (M.S. 1300C2).

Sincerely,



Dale N. Hatfield
Chief
Office of Engineering and Technology